

9 FAM 42.81 Procedural Notes

(TL:VISA-285; 05-17-2001)

9 FAM 42.81 PN1 Refusal Procedures

(TL:VISA-285; 05-17-2001)

If the consular officer determines that the applicant is not eligible for a visa the following actions should be taken.

9 FAM 42.81 PN1.1 Inform the Alien Orally and in Writing

(TL:VISA-285; 05-17-2001)

INA 212(b) requires officers to provide timely written notice that the alien is inadmissible. The written notification should provide the alien (and the attorney of record) with:

- (1) The provision(s) of law on which the refusal is based;*
- (2) The factual basis for the refusal (unless such information is classified);*
- (3) Any missing documents or other evidence required;*
- (4) What procedural steps must be taken by the consular officer or Department; and*
- (5) Any relief available to overcome the refusal.*

See also 9 FAM 42.81 PN2.

9 FAM 42.81 PN1.2 Prepare Form OF-194

(TL:VISA-285; 05-17-2001)

a. When an applicant is refused a visa, the consular officer shall prepare Form OF-194, Refusal Letter and Refusal Worksheet, explaining the ground(s) of ineligibility and the steps, if any, which may be taken to overcome the refusal. The front page of Form OF-194 provides an opportunity to check, as grounds for refusal, INA 221(g), 212(a)(1), or 212(a)(4) and also provides space to insert additional ground(s) of ineligibility under INA 212(a) and to explain the basis of the refusal. Form DSL-851(A), Brief Description of Aliens Ineligible to Receive Visas, may also be used in conjunction with Form OF-194 to explain grounds of ineligibility. The consular officer should ensure the explanation is complete and sets forth the facts that led to the determination that the applicant is ineligible. [See PN2 and 40.4 Notes for restrictions on information which may not be divulged.]

b. Posts should reproduce the Form OF-194 in the language of the host country and it should be addressed to the applicant using the applicant's complete name. Consular officers should include the Form OF-194 with the other documents not being retained in the post's refusal file. If the applicant is refused under INA 221(g), consular officers should be sure to list all documents that are lacking, as well as any available information for obtaining them. Merely noting "Documents submitted not sufficient" is inadequate. Applicants who are ineligible under INA 221(g) must be informed of the provisions of INA 203(g) concerning termination of registration [see 9 FAM 42.83(b)]. If an applicant is refused a visa under INA 221(g) resulting from post actions, posts should annotate the OF-194 to indicate that the case has been refused pending an investigation, an advisory opinion, or administrative processing, as appropriate. The applicant should be given a realistic estimate of the time needed for the processing and instructions on how the applicant can follow-up at the end of this period.

9 FAM 42.81 PN1.3 Prepare Refusal Worksheet

(TL:VISA-285; 05-17-2001)

a. The consular officer refusing the visa shall:

- (1) Complete Page 2 of Form OF-194, the Refusal Worksheet; and*
- (2) Retain the worksheet in the post's files.*

b. The refusal worksheet should include:

- (1) Internal data regarding the reason(s) behind the refusal;*
- (2) Reference to relevant classified documents;*
- (3) Data regarding the review of the refusal within the office;'*
- (4) A notation as to whether a waiver has been requested; and*
- (5) The status of the refusal.*

c. The Refusal Worksheet is for the post's internal use only and should not be provided to the alien or the alien's representative under any circumstances.

9 FAM 42.81 PN1.5 Submit Case for Supervisory Review

(TL:VISA-285; 05-17-2001)

The adjudicating officer must send the file to the designated supervisory officer. The supervisory officer shall:

- (1) Review the case*

(2) *Confirm or disagree with the refusal; and*

(3) *Indicate the decision in Part 3 of Form OF-194.*

The Department's regulation at 22 CFR 42.81(c) specifies that the supervisory officer must review the refusal on the day of the refusal or as soon thereafter as is administratively possible (no later than 30 days after the refusal, in any event). When the basis for the refusal is not entirely clear-cut, the supervisory officer should review the case immediately. If the reviewing officer does not concur in the refusal that officer must either refer the case to the Department for an advisory opinion or assume personal responsibility for the case. If the reviewing officer reverses the refusal decision, the applicant should be promptly notified. The original refusing officer should be advised before the applicant is notified. [See 9 FAM 42.81 PN1.3 below.]

9 FAM 42.81 PN1.6 Annotate Form OF-224B or Enter Into IVACS

(TL:VISA-285; 05-17-2001)

The consular officer must make a notation on Form OF-224B, Immigrant Visa Control Card, or in the IVACS record, of all the sections of INA under which the case was refused.

9 FAM 42.81 PN1.6-1 Proper Maintenance of Control Cards

Posts must follow procedures for proper maintenance of the chronological card files carefully in order to identify aliens refused under INA 221(g) who have not overcome the refusal within 1 year. Under the provisions of INA 203(g) the registration of such aliens is to be terminated and a notice of the termination sent to the alien. [See 9 FAM 42.52 PN3.10 and 22 CFR 42.83(b)]

9 FAM 42.81 PN1.6-2 Entering Refusals into Class

(TL:VISA-285; 05-17-2001)

When an alien is found ineligible, the post must enter the name of an alien into CLASS by means of the visa lookout telegram (for posts not on-line) or by computer locally (by posts on-line). [See 9 FAM Part IV Appendix D, 200.]

9 FAM 42.81 PN 1.7 Annotate Passport

(TL:VISA-285; 05-17-2001)

a. *The consular officer must follow established procedures when indicating immigrant visa refusals in passports.* Posts should place a stamp in passports to indicate when a visa application is received and refused. The purpose of the stamp is for record keeping purposes *which help* the post locate applications when the applicant reapplies for a visa.

b. The stamp should be 1/2 inch in height and contain the following text:

U.S. (EMBASSY/CONSULATE GENERAL/CONSULATE)

(NAME OF POST) Application Received on _____.

c. The procedure below should be followed when using the stamp:

(1) The stamp should be placed on the back page of the passport, which corresponds to the front page containing the biographic data and/or photograph. Any attempt to tear out the page with the stamp should ruin the passport.

(2) The date should be entered with indelible ink or with a date stamp.

(3) If an applicant returns every few days for a new interview but is still considered ineligible, the passport need not be stamped each time. The passport should be stamped again if a 3-month period has elapsed since the last application. The term "Application Received" with no other stamp in the passport will indicate that the visa was refused. A passport with an "Application Received" stamp accompanied by a subsequently issued immigrant visa indicates that the refusal was overcome.

9 FAM 42.81 PN2 Discussion by Reviewing Officer

(TL:VISA-285; 05-17-2001)

The regulations indicate only two possible actions for a reviewing officer who disagrees with a refusal:

(1) *Submission of the case to the Department; or*

(2) *Personal assumption of responsibility by reversing the refusal.*

The reviewing officer should discuss the case fully with the refusing officer before taking either action. The principles of good management require that the junior officer be involved in any action possibly bearing on the junior officer's judgment and performance. Also, in the course of discussion the reviewing officer may become aware of additional facts which the refusing officer did not make clear in the refusal worksheet. Most important, the junior officer will learn more about the visa function and the application of some of the more complicated laws and regulations in visa work. Ideally, any differences will be worked out in the discussion and the refusing officer, not the reviewing officer, will take whatever action is necessary. Only if there is no resolution should the reviewing officer take the actions specified in 22 CFR 42.81(c), and then only after the refusing officer has been informed what the action will be and why.

9 FAM 42.81 PN3 Informing the Applicant of Refusal

(TL:VISA-285; 05-17-2001)

a. Consular officers should convey visa refusals in a sympathetic but firm manner. The manner in which visa applications are refused can be very important in relations between the post and the population of the host country. Consular officers must be careful not to appear insensitive.

b. Some officers understandably are, or try to be, very sympathetic, but that too can create problems. If a tone of authority is not evident, the applicant may misunderstand the officer's intentions and believe the visa might still be issued. (In some societies, such a situation might be interpreted as an invitation to a bribe.)

c. The consular officer should aim for a measured, sympathetic but firm, style which will convince the ineligible applicant that the treatment accorded was fair. The consular officer should refer to pertinent statements of the applicant, written or oral, or to a conviction, medical report, false document, previous refusal, or the like, as the basis of the refusal. The officer should then explain the law simply and clearly.

9 FAM 42.81 PN4 Quasi-Refusal Cases

9 FAM 42.81 PN4.2 Informing Alien of Apparent Ineligibility

(TL:VISA-285; 05-17-2001)

a. The decision to issue or refuse a visa can be made only after an applicant has"

- (1) Executed an application for a visa;*
- (2) Presented all the documentation required by law; and*
- (3) Paid the prescribed fee.*

b. If an alien who has not filed a formal application inquires about eligibility for a visa, and it appears from statements made or evidence presented that the alien would be ineligible to receive a visa and that no exemption applies, the consular officer should point out the pertinent section of the law to the alien. The alien should be informed that the evidence and general circumstances described might bring the case under the cited INA provision.

9 FAM 42.81 PN4.2 Entering Quasi-Refusal Into CLASS

(TL:VISA-285; 05-17-2001)

If, after being informed of the apparent ineligibility, the alien decides not to submit a formal application, the situation does not constitute a formal refusal and it should not be reported as such by the post. A lookout entry, however, may be appropriate. If so, the name should be entered into CLASS. [See 9 FAM Part IV Appendix D Exhibit I.]

9 FAM 42.81 PN5 Procedures in Cases Deferred for Advisory Opinions or Other Reasons

(TL:VISA-285; 05-17-2001)

If after interviewing the applicant, the consular officer decides that an advisory opinion is necessary, the officer must first refuse the alien under INA 221(g). The record copy of the request for advisory opinion should be attached to the documents retained and filed in the post's A-Z file. Documents should not be returned to the applicant until final action is taken. The post must use a tickler system as a reminder to send a follow-up request for a response after a reasonable period of time has elapsed. If it is later determined on the basis of the Department's advisory opinion that the alien is ineligible under a provision of INA 212(a) or INA 212(e), the alien should then be refused under the pertinent section. Under no circumstances should a final resolution of the question of eligibility be made before the Department's advisory opinion is received. The same procedure is to be followed if the medical examiner is unable to make a determination under INA 212(a)(1) for want of further X-rays, tests, etc., and defers the case for a given time. This procedure is also to be followed in other situations where the alien has formally applied, but a final determination is deferred for additional evidence, further clearance, name check, or some other similar reason.

9 FAM 42.81 PN6 Cases Involving Classified Information Reported to Department

(TL:VISA-66; 9-30-92)

See 9 FAM Part IV Appendix A for required reports.

9 FAM 42.81 PN7 Required Reports of Immigrant Visas Issued and Refused

(TL:VISA-285; 05-17-2001)

See 9 FAM Part IV *Appendix I*.

9 FAM 42.81 PN8 Visa Annotation With Refusal Overcome

(TL:VISA-66; 9-30-92)

a. In cases where an alien's name has been entered into CLASS as a formal INA 212(a) refusal, and the grounds for refusal are subsequently overcome for whatever reason, the visa should be annotated to reflect that the bearer has overcome the ineligibility. This is necessary because all INA 212(a) CLASS entries are also shared with the INS NAILS and Customs "TECH" lookout systems, and deletion from the systems may take several months. Meanwhile the alien will be subject to secondary inspection unless there is a notation on his or her visa. The annotation should be in the form of a rubber stamp placed on both immigrant and nonimmigrant visas which should read:

CLASS (#) OVERCOME.

b. Posts should not confuse this annotation procedure with specific waiver information. Where an ineligibility is waived rather than overcome posts should continue to put the waiver information below the visa.

9 FAM 42.81 PN9 Filing the Refusal File

(TL:VISA-285; 05-17-2001)

The refusal file consists of the following:

- (1) One copy of Form OF-230 I and II;*
- (2) One copy of each document presented by the applicant;*
- (3) Form OF-194 refusal worksheet(s); and*
- (4) Any document(s) pertaining to the alien's ineligibility in the Category I or Category II refusal files as applicable. (Category I includes cases under INA 212(a)(1), (2), (3), (6) and (8). Category II encompasses all other refusal categories.)*